

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

C.P. (I.B) No.5/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.05.2020**

Name of the Company: Phoenix ARC Pvt. Ltd. (Trustee of Phoenix Trust
FY 14-9)
V/s.
Nagaur Water Supply Company Pvt. Ltd.

Section: Section 7 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

The case is taken up through Video Conferencing.

Today, the case is fixed for Pronouncement of Order.

The Order is Pronounced in Open Court.

The CP(IB) No. 5 of 2018 is rejected, the detailed order recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 27th day of May, 2020.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 5/7/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

In the matter of:

M/s. Phoenix ARC Private Limited,
(Trustee of Phoenix Trust FY 14-9),
Having its registered office at:
Dani Corporate Park,
5th Floor, 158, C.S.T. Road,
Kalina, Santacruz (E),
Mumbai – 400098, India.

..... Petitioner/ Financial Creditor

Versus

M/s. Nagaur Water Supply Company Private Limited,
(NAGOUR),
Building No.9 & 12-A(House No.13),
Sigma Corporate, B/h. Rajpath Club,
Off. S. G. Road, Bodakdev,
Ahmedabad – 380054,
India.

.....Respondent/ Corporate Debtor

Appearance:

Mr. Ashish Doshi, PCS for the Petitioner.
Mr. Shashvata Shukla, Advocate for the Respondent.

Order delivered on 27th May, 2020.

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ORDER

[Per: Mr. Harihar Prakash Chaturvedi, Member (Judicial)]

1. The present I.B. Petition is preferred by the Petitioner/
Financial-Creditor **M/s. Phoenix ARC Private Limited**
under **Section 7** of the Insolvency and Bankruptcy Code,
2016 (herein after referred to as a "Code"), seeking
initiation of Corporate-Insolvency-Resolution-Process
("CIRP" in Short) in respect of the Corporate-Debtor-
Company namely, **M/s. Nagaur Water Supply Company**
Private Limited. The Petitioner/Financial-Creditor, M/s.
Phoenix ARC Private Limited is acting in its capacity as a
trustee of M/s. Phoenix Trust FY - 14-9, a company
incorporated under the provisions of Companies Act,
1956 and registered as a Securitization or
Reconstruction Company with the Reserve Bank of India
u/s 3 of the **Securitization and Reconstruction of**
Financial Assets and Enforcement of Security
Interest Act, 2002, having its registered office at: Dani
Corporate Park, 5th Floor, 158, C.S.T. Road, Kalina,
Santacruz (E), Mumbai-400098, India.
2. The Respondent/Corporate-Debtor-Company, namely
M/s. Nagaur Water Supply Company Private Limited was
incorporated on 26.03.2008 with CIN:
U41000GJ2008PTC053373. As submitted, the

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authorised share capital of the company is Rs.1,00,000/- (Rupees One Lakh only). The issued, subscribed and paid up share capital is Rs.1,00,000/- (Rupees One Lakh only). It reflects that the Respondent Company is engaged in the business of desalination of water. The registered addresses of the Respondent/ Corporate-Debtor-Company are:

(i) Building No.9, Sigma Corporate, Behind Rajpath Club, Off. S.G. Road, Bodakdev, Ahmedabad – 380054, India.

(ii) Building No.12-A (House No.13, Sigma Corporate, Behind Rajpath Club, Off. S.G. Road, Bodakdev, Ahmedabad – 380054.

(iii) 1015, 'A' Wing, 10th Floor, Atma House, Opp. La-Gajjar Chambers – RBI, Ashram Road, Ahmedabad – 380009.

3. It is submitted that the Respondent has availed certain financial facilities from the lender **M/s. L&T Infrastructure Finance Ltd.** vide agreement dated 14.06.2011 for an amount of Rs.40,00,00,000=00 (Rupees Forty Crore Only) which was to be repaid within a period of ten years at 120 structured monthly instalments with an interest of 13.00%p.a. for the purpose of Securitization of project receivables of

Desalination and water supply project implemented by NWSCPL at Nagpur, Rajasthan.

4. It is submitted that the total outstanding as on 30.11.2017 is Rs.74,22,55,644=00 (Rupees Seventy-Four Crore Twenty-Two Lakhs Fifty-Five Thousand Six Hundred Forty-Four only).
5. It is submitted that the Petitioner **Company, M/s. Phoenix acquired the Financial Assets** of the Corporate Debtor **from L&T Infrastructure Finance Company Limited (Assignor)** vide Assignment Agreement **dated 30.12.2013.**
6. The Petitioner/Financial-Creditor has given a total break-up of total outstanding amount as per the table given below:

Opening Balance (as per assignor statement) as on 28.03.2014	39,90,81,318=00
Interest for period 28.03.2014 to 30.11.2017	29,70,91,979=00
Penal interest for the period 28.03.2014 to 30.11.2017	4,07,30,719=00
Delayed Interest charged by assignor	51,18,703=00
Expenses	2,32,925=00

7. It is stated that **the Respondent's account was declared as a Non-Performing Asset ("NPA") on 30.11.2013.**

8. The Petitioner, with the permission of this Court filed rebuttal documents on 03.07.2019 during the preceding and the prayer was allowed by this Tribunal.

9. As per the documents submitted by the Petitioner, the L&T Infrastructure Finance Co. Ltd. had sanctioned following credit facility:

Sr. No.	Facilities	Amount
1.	Term Loan	Rs.40,00,00,000=00

10. The Petitioner, along with the original petition, has annexed certain documents in support of sanction of loan and to secure the loan disburse to the Corporate Debtor which includes:

- (i) Copy of Loan Sanction Letter dated 24.03.2011.
- (ii) Copy of Facility Agreement dated 14.06.2011.
- (iii) Copy of Demand Promissory Note dated 14.06.2011.
- (iv) Copy of Deed of Hypothecation dated 14.06.2011.
- (v) Copy of Borrowers Undertaking cum indemnity dated 14.06.2011.

(vi) Copy of irrevocable power of attorney dated 14.06.2011.

(vii) Copy of Deed of Guarantee dated 14.06.2011.

11. The Petitioner submits that lender L&T Infrastructure Finance Co. Ltd. has duly assigned the above stated debts of the Corporate Debtor to the present Petitioner, vide its assignment deed dated 30.12.2013.
12. The Petitioner states that the loan amount is shown in the balance sheet of the Corporate Debtor. In support of such contention, the Petitioner has annexed a copy of the audited accounts of Corporate Debtor filed before the ROC to the Ministry of Corporate Affairs for the Financial Year ending on 31.03.2015, 31.03.2016 and 31.03.2017. Hence, as per the petitioner, it is as good as acknowledgement of its debt liability and such debt is not barred by the limitation.
13. It is submitted that the debt shown in the balance sheet is still due and payable to the L&T Infrastructure Finance Co. Ltd, which has now stands assigned to the present Petitioner. Hence, the present I.B. Petition is filed within the limitation.

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14. In response to the present petition, the Respondent/ Corporate Debtor has filed its objection reply as well as written submission and has contended that the Petitioner is not properly authorised to file the present I.B. Petition by the capacity of Trustee of Phoenix Trust FY 14-9, the main assignee of the present debts. The assignment agreement clearly shows that such agreement was entered between **L&T Infrastructure Finance Co. Ltd. and Phoenix Trust FY 14-9** and not between **Phoenix ARC Pvt. Ltd.** Hence, it cannot be termed as a Financial Creditor of the present Corporate Debtor as there is no further debt assignment/ transfer of debts in favour of present petitioner, Phoenix ARC Pvt. Ltd. **A member of trust cannot act on behalf of the trust till it is properly authorised by all the member of trust because** the trust is not a corporate entity.
15. It is also contended that the Petitioner did not produced a copy of the Deed of Trust and hence, the present application filed under Section 7 is found incomplete.
16. Notwithstanding the above, this Tribunal, vide its order dated 28.08.2019 granted time to the Petitioner to give clarification by furnishing relevant documents in support of the averments made and to cure such defects and the

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same after hearing the counsel for both parties was taken on record vide its order dated 23.09.2019.

17. Therefore, the Respondent has contended that although a copy of Trust Deed on 21.09.2019 has been furnished by the Petitioner but no application for condonation of delay by showing sufficient reasons has been filed not the defects were cured within the prescribed period under the I.B. Code. Hence, cannot be entertained by this Court for disposal of the present petition.

18. The Respondent has further placed reliance on the decision of Hon'ble Supreme Court in the matter of **B.K. Educational Services (Supra)** stating that the present Insolvency Proceedings have been initiated beyond the prescribed period of limitation of three years from the date of default **19.02.2014** of the recall notice. Hence, it is barred by the limitation.

19. Therefore, in the present matter, the issue of limitation needs to be considered first by this Court. As per the record, the date of default date of (declaration) of **NPA, i.e. 30.11.2013**. Hence, the limitation in the present matter would start from as per the Article 137 of the Limitation Act from the date of default, i.e. the date of declaring NPA viz. 30.11.2013, while the present I.B.

Petition was filed on 15.12.2017 before this court. Hence, in our view, it is filed beyond the limitation.

The legal position, in this respect has been well settled by the Hon'ble Supreme Court in catena of its decision, i.e. in **Vashdeo R. Bhojwani Vs. Abhyudaya Co-operative Bank Ltd. & Ors. Civil Appeal No. 11020 of 2018, Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. and Ors. decided on 18.09.2019 and Sagar Sharma Vs. Phoenix ARC (P.) Ltd.** wherein, their Lordship has pleased to reiterate its view as taken in its decision in **B.K. Educational Services (P.) Ltd. Vs. Parag Gupta** on the issue of limitation applicable to an I.B. Petition.

For the sake of convenience, the relevant paragraph of above stated decision Hon'ble Supreme Court in the matter of **B.K. Educational Services (P.) Ltd. Vs. Parag Gupta** is being reproduced herein below.

"It is thus clear that since the Limitation Act is applicable to applications filed Under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred Under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5



of the Limitation Act may be applied to condone the delay in filing such application.”

20. The Hon'ble Supreme Court further in the another judgment in the matter of **Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Limited** has pleased to refer to a report of the Insolvency committee which speaks that the **I.B. Code cannot give a new lease of life to debts which are already time barred.** The relevant portion of decision in (the matter of **Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Ltd. and Ors. (18.09.2019 - SC): MANU/SC/1301/2019**) is being reproduced here as under:

“1. In the present case, the Respondent No. 2 was declared **NPA on 21.07.2011**. At that point of time, the State Bank of India filed two O. As in the Debt Recovery Tribunal in 2012 in order to recover a total debt of 50 Crores of rupees. In the meanwhile, by an assignment dated 28.03.2014, the State Bank of India assigned the aforesaid debt to Respondent No. 1. The Debt Recovery Tribunal proceedings reached judgment on 10.06.2016, the Tribunal holding that the O. As filed before it were not maintainable for the reasons given therein.

2. As against the aforesaid judgment, Special Civil Application Nos. 10621-10622 were filed before the Gujarat High Court which resulted in the High Court

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remanding the aforesaid matter. From this order, a Special Leave Petition was dismissed on 25.03.2017.

3. An independent proceeding was then begun by **Respondent No. 1 on 03.10.2017** being in the form of a Section 7 application filed under the Insolvency and Bankruptcy Code in order to recover the original debt together with interest which now amounted to **about 124 Crores of rupees**. In the Form-I that has statutorily to be annexed to the Section 7 application in Column II which was the date on which default occurred, the date of the NPA i.e. **21.07.2011** was filled up. The NCLT applied Article 62 of the Limitation Act which reads as follows:

Description of suit	Period of limitation	Time from which period begins to run
To enforce payment of money secured by a mortgage or otherwise charged upon immovable property	Twelve years	When the money sued for becomes due

Applying the aforesaid Article, the NCLT reached the conclusion that since the limitation period was 12 years from the date on which the money suit has become due, the aforesaid claim was filed within limitation and hence admitted the Section 7 application. The NCLAT vide the impugned judgment held, following its earlier judgments, that the time of limitation would begin running for the purposes of limitation only on and from 01.12.2016 which is the date on which the Insolvency and Bankruptcy Code was brought into force. Consequently, it dismissed the appeal.

4. Mr. Aditya Parolia, learned Counsel appearing on behalf of the Appellant has argued that Article 137 being a residuary Article would apply on the facts of this case, and as right to sue accrued only on and from 21.07.2011, three years having elapsed since then in 2014, the Section 7 application filed in 2017 is clearly out of time. He has also referred to our judgment in *B.K. Educational Services Private Limited v. Parag Gupta and Associates*, MANU/SC/1160/2018 in order to buttress his argument that it is Article 137 of the Limitation Act which will apply to the facts of this case.

5. Mr. Debal Banerjee, learned Senior Counsel, appearing on behalf of the Respondents, countered this by stressing, in particular, para 7 of the *B.K. Educational Services Private Limited (supra)* and reiterated the finding of the NCLT that it would be Article 62 of the Limitation Act that would be attracted to the facts of this case. He further argued that, being a commercial Code, a commercial interpretation has to be given so as to make the Code workable.

6. Having heard the learned Counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed Under Section 7, would fall only within the residuary Article 137. As rightly pointed out by learned Counsel appearing on behalf of the Appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed Under Section 7 would clearly be time-barred. So far as Mr. Banerjee's reliance on para 7 of *B.K. Educational Services Private Limited (supra)*, suffice it to

say that the Report of the Insolvency Law Committee itself stated **that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.**

7. This being the case, we fail to see how this para could possibly help the case of the Respondents. Further, it is not for us to interpret, commercially or otherwise, articles of the Limitation Act when it is clear that a particular Article gets attracted. It is well settled that there is no equity about limitation-judgments have stated that often time periods provided by the Limitation Act can be arbitrary in nature.

8. This being the case, the appeal is allowed and the judgments of the NCLT and NCLAT are set aside."

21. The Hon'ble Supreme Court further in the matter of **Vashdeo R. Bhojwani Vs. Abhyudaya Co-operative Bank Ltd. & Ors.** has pleased to hold that the limitation/ cause of action starts from the date of default by declaring NPA and not from the date of issue of a recovery certificate if issued by the DRT and in such case, only Article 137 would apply. Thus, the Hon'ble Supreme Court pleased to dismiss the I.B. Petition being time barred.

22. For the sake of convenience, the relevant portion of the above stated decision (**Vashdeo R. Bhojwani vs. Abhyudaya Co-operative Bank Ltd. and Ors. (02.09.2019 -**

SC): MANU/SC/1213/2019) is being reproduced herein below:

1. In the facts of the present case, at the relevant time, a default of Rs. 6.7 Crores was found as against the Respondent No. 2. The Respondent No. 2 had been declared a NPA by Abhyudaya Cooperative Bank Limited **on 23.12.1999**. Ultimately, a **Recovery Certificate dated 24.12.2001 was issued for this amount**. A Section 7 petition was filed by the Respondent No. 1 on 21.07.2017 before the NCLT claiming that this amount together with interest, which kept ticking from 1998, was payable to the Respondent as the loan granted to Respondent No. 2 had originally been assigned, and, thanks to a merger with another Cooperative Bank in 2006, the Respondent became a Financial Creditor to whom these moneys were owed. A petition Under Section 7 was admitted on 05.03.2018 by the NCLT, stating that as the default continued, no period of limitation would attach and the petition would, therefore, have to be admitted.

2. An appeal filed to the NCLAT resulted in a dismissal on 05.09.2018, stating that since the cause of action in the present case was continuing no limitation period would attach. It was further held that the Recovery Certificate of 2001 plainly shows that there is a default and that there is no statable defence.

3. Having heard learned Counsel for both parties, we are of the view that this is a case covered by our recent judgment in **B.K. Educational Services Private Limited v. Parag Gupta and Associates**, MANU/SC/1160/2018 : 2018 (14) Scale 482, Para 27 of which reads as follows:

27. It is thus clear that since the Limitation Act is applicable to applications filed Under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred

Under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

4. In order to get out of the clutches of para 27, it is urged that Section 23 of the Limitation Act would apply as a result of which limitation would be saved in the present case. This contention is effectively answered by a judgment of three learned Judges of this **Court in Balkrishna Savalram Pujari and Ors. v. Shree Dnyaneshwar Maharaj Sansthan and Ors.**, MANU/SC/0174/1959 : [1959] Supp. (2) S.C.R. 476. In this case, this Court held as follows:

... In dealing with this argument it is necessary to bear in mind that **Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue.** If, however, a wrongful act is of such a character that the injury caused by it itself continues then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the Appellants' rights though the damage caused by the said decree subsequently continued... (at page 496).

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Following this judgment, **it is clear that when the Recovery Certificate dated 24.12.2001 was issued, this Certificate injured effectively and completely the Appellant's rights as a result of which limitation would have begun ticking.**

5. This being the case, and the claim in the present suit being time barred, there is no doubt that is due and payable in law. We allow the appeal and set aside the orders of the NCLT and NCLAT. There will be no order as to costs."

23. Further, similar view and stand was taken by the Hon'ble Supreme Court in the matter of **Sagar Sharma Vs. Phoenix ARC (P.) Ltd.** For the sake of convenience, the relevant portion of the decision in **Sagar Sharma and Ors. vs. Phoenix ARC Pvt. Ltd. and Ors. (30.09.2019 - SC: MANU/SC/1357/2019)** is being reproduced herein below: -

"1. By our judgment dated 11.10.2018 in *B.K. Educational Services Private Limited v. Parag Gupta and Associates (MANU/SC/1160/2018)* we had made it clear that the Insolvency and Bankruptcy Code's coming into force on 01.12.2016 is wholly irrelevant to the triggering of any limitation period for the purposes of the Code. However, we find that in the impugned judgment the following statement is made:

"13. Admittedly, 'I & B Code' has come into force since 1st December, 2016, therefore, the right to apply accrued to 1st Respondent on 1st December, 2016. Therefore, we hold that the application Under Section 7 was not barred by limitation."



2. **We had also made it clear beyond any doubt that for applications that will be filed Under Section 7 of the Code, Article 137 of the Limitation Act will apply.** However, we find in the impugned judgment that Article 62 (erroneously stated to be Article 61) was stated to be attracted to the facts of the present case, considering that there was a deed of mortgage which was executed between the parties in this case. **We may point out that an application Under Section 7 of the Code does not purport to be an application to enforce any mortgage liability.** It is an application made by a financial creditor stating that a default, as defined under the Code, has been made, which default amounts to Rs. 1,00,000/- (one lakh) or more which then triggers the application of the Code on settled principles that have been laid down by several judgments of this Court.

3. **Article 141 of the Constitution of India mandates that our judgments are followed in letter and spirit. The date of coming into force of the IBC Code does not and cannot form a trigger point of limitation for applications filed under the Code. Equally, since "applications" are petitions which are filed under the Code, it is Article 137 of the Limitation Act which will apply to such applications.**

4. Accordingly, we set aside the judgment under appeal and direct that the matter be determined afresh. It will be open for both sides to argue the case on facts on the footing that Article 137 of the Limitation Act alone will apply.

5. The appeal is allowed in the aforesaid terms.

6. The NCLT order dated 29.01.2019 shall remain stayed until further orders from the NCLAT.

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7. Mr. Rakesh Dwivedi, learned Senior Counsel, wishes to raise a plea based on Section 22 of the Limitation Act before the NCLAT. We record this statement.”

24. In addition to the above, the Hon'ble NCLAT, in its decision in the matter of **C. Shivakumar Reddy Vs. Dena Bank and Ors.** has held that the **acknowledgement of the amount of debts shown in the annual balance sheet cannot be treated a proper acknowledgement of loan debts under Section 13 of the Limitation Act.** The relevant portion of the said judgment is reproduced herein below: **(C. Shivakumar Reddy)**

“4. The learned Counsel for the Respondent contended that on 28th March, 2014, the Corporate Debtor deposited two months interest amounting to Rs.111 lakhs. Subsequently, in its reply dated 5th January 2015 to the Demand Notice issued on 22nd December, 2014, the Corporate Debtor sought restructuring of the debt. Infact, the Corporate Debtor defaulted in re-payment of the loan to the 1st Respondent Bank had accepted in the Balance Sheet of the Corporate Debtor that loan is due for the year 2016-17. The Corporate Debtor also acknowledged its liability, which is also clear from the letter of one-time settlement sent on 3rd March, 2017, which was rejected by the Bank on 28th April, 2018.

5. It is not in dispute that the Respondent has accepted that the Corporate Debtor defaulted to pay the debt on 30th September, 2013. The account was classified as NPA with effect from 31st December, 2013.

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6. Section 18 of the Limitation Act, 1963 reads as follows: -

“18. Effect of acknowledgment in writing.

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation For the purposes of this section,

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;
Company Appeal (AT) (Insolvency) No. 407 of 2019 Page 4 of 14

(b) the word signed means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

7. In the present case, there is nothing on record to suggest that the Corporate Debtor acknowledged the debt within three years and agreed to pay the debt. The application moved by Corporate Debtor to restructure the

debt or payment of the interest, does not amount to acknowledgement of debt. There is nothing on record to suggest that the Corporate Debtor or its authorized representative by its signature has accepted or acknowledged the debt within three years from the date of default or from the date when the account was declared NPA, i.e., on 31st December, 2013. The Balance Sheet of the Corporate Debtor for the year 2016-2017 filed after 31st March, 2017 cannot be termed to be a document of acknowledgement in terms of Section 18 of the Limitation Act.”

25. By placing the reliance on the above stated decision(s) of the Apex Court, it is evident and as per the Petitioner, the Corporate Debtor's account was declared Non Performing Asset ("NPA") is on **30.11.2013** by the **then Financial Creditor L&T Infrastructure Finance Co. Ltd.** It is also a matter of record and is evident that the above Financial Creditor has assigned its debt in favour of the present Petitioner being a trustee of Phoenix Trust – FY.2014, of which, the present Petitioner is a trustee and assignment was made on 30.12.2013. Thereafter, it issued a notice for recalling the loan on 19.02.2014. Thus, it is well establish that the date of default in the present matter commences is 13.12.2013 (date of NPA) or 19.02.2014 (date of recall of notice), hence the limitation would commence from such date since the present I.B. Petition is moved by the present Petitioner before this court on

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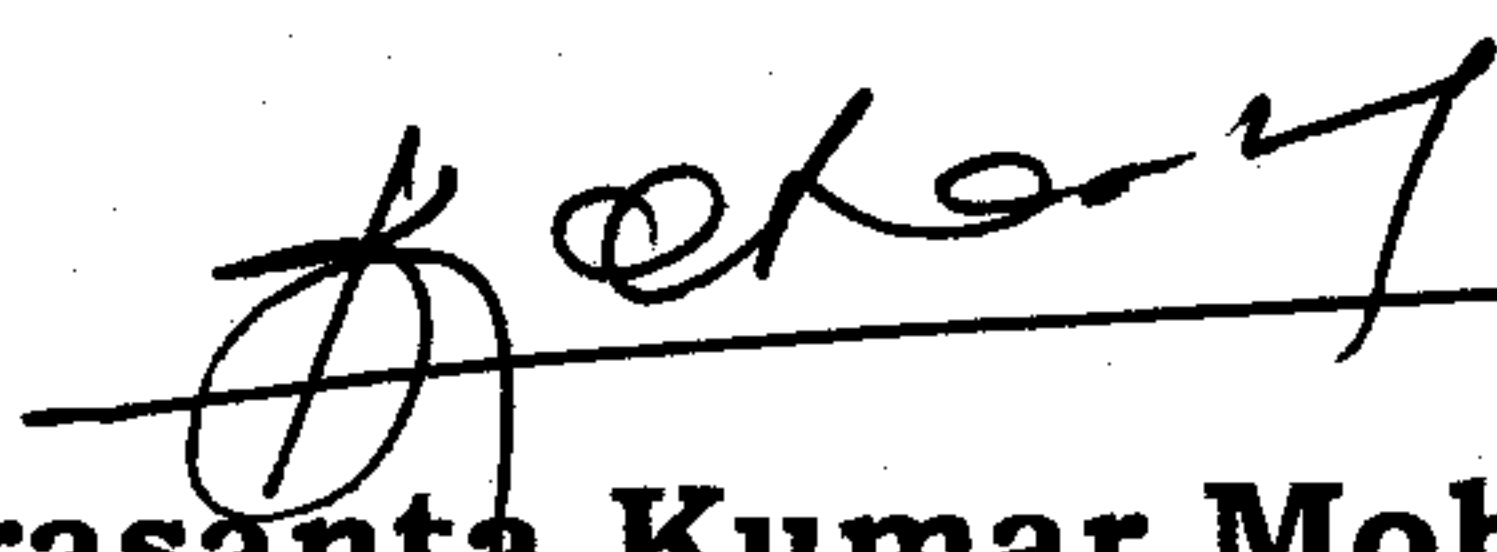
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15.12.2017, hence it is clearly hit by the above stated provisions of Article 137 of the Indian Limitation Act and barred by the limitation, in view of the above stated decisions of the Hon'ble Supreme Court.

26. Therefore, this Adjudicating Authority need not to examine merits or to go into the controversy in the present I.B. Petition. The matter can be simply disposed of on the ground of the limitation. As the present I.B. Petition is found to be filed beyond Limitation i.e., three years from the date of default, i.e. date of declaration of NPA and date of recalling of notice, i.e. 14.02.2014. Hence, it is held that it is hit by limitation and cannot be entertained.

27. Accordingly, the present I.B. Petition is rejected.

No order as to costs.


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

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